

AMENDED IN ASSEMBLY AUGUST 13, 2014

AMENDED IN ASSEMBLY AUGUST 4, 2014

AMENDED IN ASSEMBLY JUNE 17, 2014

AMENDED IN SENATE JANUARY 14, 2014

AMENDED IN SENATE MAY 2, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 785

Introduced by Senator Wolk

(Principal coauthor: Assembly Member Levine)

February 22, 2013

An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend, *repeal, and add* Section 32132.5 of the Health and Safety Code, and to add *and repeal* Article 6 (commencing with Section 10187) ~~to~~ of Chapter 1 of Part 2 of Division 2 of, to add *and repeal* Chapter 4 (commencing with Section 22160) ~~to~~ of Part 3 of Division 2 of, to repeal Sections 20133, 20175.2, 20193, 20301.5, and 20688.6 of, and to repeal Article 22 (commencing with Section 20360) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to design-build.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as amended, Wolk. Design-build.

Existing law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies

to use the design-build procurement process for specified public works under different laws.

This bill would repeal those authorizations, and enact provisions that would authorize, *until January 1, 2025*, the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. The bill would authorize, *until January 1, 2025*, the Marin Healthcare District to use the design-build process when contracting for the construction of a building and improvements directly related to a hospital or health facility building at the Marin General Hospital. The bill would require specified information to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Marin Healthcare District.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to consolidate
- 2 existing design-build statutes and eliminate inconsistencies in
- 3 statutory language by adopting authority of general application to
- 4 identified agencies and repealing superseded sections.
- 5 SEC. 2. Section 14661 of the Government Code is repealed.
- 6 SEC. 3. Section 14661.1 of the Government Code is repealed.
- 7 SEC. 4. Section 32132.5 of the Health and Safety Code is
- 8 amended to read:
- 9 32132.5. (a) Notwithstanding Section 32132 or any other law,
- 10 upon approval by the board of directors of the Sonoma Valley
- 11 Health Care District or the Marin Healthcare District, as applicable,
- 12 the design-build procedure described in Chapter 4 (commencing
- 13 with Section 22160) of Part 3 of Division 2 of the Public Contract
- 14 Code may be used to assign contracts for the construction of a
- 15 building or improvements directly related to construction of a

1 hospital or health facility building at the Sonoma Valley Hospital
2 or the Marin General Hospital.

3 (b) For purposes of this section, all references in Chapter 4
4 (commencing with Section 22160) of Part 3 of Division 2 of the
5 Public Contract Code to “local agency” shall mean the Sonoma
6 Valley Health Care District and the Marin Healthcare District.

7 (c) A hospital building project utilizing the design-build process
8 authorized by subdivision (a) shall be reviewed and inspected in
9 accordance with the standards and requirements of the Alfred E.
10 Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1
11 (commencing with Section 129675) of Part 7 of Division 107).

12 (d) *This section shall remain in effect only until January 1, 2025,*
13 *and as of that date is repealed.*

14 *SEC. 5. Section 32132.5 is added to the Health and Safety*
15 *Code, to read:*

16 *32132.5. (a) Notwithstanding Section 32132 or any other*
17 *provision of law, upon approval by the board of directors of the*
18 *Sonoma Valley Health Care District, the design-build procedure*
19 *described in Section 20133 of the Public Contract Code may be*
20 *used to assign contracts for the construction of a building or*
21 *improvements directly related to construction of a hospital or*
22 *health facility building at the Sonoma Valley Hospital.*

23 (b) For purposes of this section, all references in Section 20133
24 of the Public Contract Code to “county” and “board of
25 supervisors” shall mean the Sonoma Valley Health Care District
26 and its board of directors.

27 (c) A hospital building project utilizing the design-build process
28 authorized by subdivision (a) shall be reviewed and inspected in
29 accordance with the standards and requirements of the Alfred E.
30 Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1
31 (commencing with Section 129675) of Part 7 of Division 107).

32 (d) *This section shall become operative January 1, 2025.*

33 ~~SEC. 5.~~

34 *SEC. 6. Article 6 (commencing with Section 10187) is added*
35 *to Chapter 1 of Part 2 of Division 2 of the Public Contract Code,*
36 *to read:*

Article 6. State Agency Design-Build Projects

10187. (a) The Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from such projects including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

(b) It is the intent of the Legislature that the following occur:

(1) This article provides general authorization for certain state agencies to use design-build for projects, excluding projects on the state highway system.

(2) This article shall not be deemed to provide a preference for the design-build method over other procurement methodologies.

10187.5. For purposes of this article, the following definitions apply:

(a) “Best value” means a value determined by evaluation of objective criteria related to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the department and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Department” means the Department of General Services and the Department of Corrections and Rehabilitation.

(d) “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity.

(e) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is

1 able to provide appropriately licensed contracting, architectural,
2 and engineering services as needed pursuant to a design-build
3 contract.

4 (f) “Design-build team” means the design-build entity itself and
5 the individuals and other entities identified by the design-build
6 entity as members of its team. Members shall include the general
7 contractor and, if utilized in the design of the project, all electrical,
8 mechanical, and plumbing contractors.

9 (g) “Director” means, with respect to procurements undertaken
10 by the Department of General Services, the Director of General
11 Services or, with respect to procurements undertaken by the
12 Department of Corrections and Rehabilitation, the secretary of that
13 department.

14 10188. (a) Notwithstanding any other law, the director,
15 following notification to the State Public Works Board, may
16 procure design-build contracts for public works projects in excess
17 of one million dollars (\$1,000,000), awarding the contract using
18 either the low bid or best value, provided that this article shall not
19 apply to any projects on the state highway system.

20 (b) The director shall develop guidelines for a standard
21 organizational conflict-of-interest policy, consistent with applicable
22 law, regarding the ability of a person or entity, that performs
23 services for the department relating to the solicitation of a
24 design-build project, to submit a proposal as a design-build entity,
25 or to join a design-build team. This conflict-of-interest policy shall
26 apply to each department entering into design-build contracts
27 authorized under this article.

28 10190. The director shall notify the State Public Works Board
29 regarding the method to be used for selecting the design-build
30 entity, prior to advertising the design-build project.

31 10191. The procurement process for the design-build projects
32 shall progress as follows:

33 (a) (1) The director shall prepare a set of documents setting
34 forth the scope and estimated price of the project. The documents
35 may include, but need not be limited to, the size, type, and desired
36 design character of the project, performance specifications covering
37 the quality of materials, equipment, workmanship, preliminary
38 plans or building layouts, or any other information deemed
39 necessary to describe adequately the department’s needs. The
40 performance specifications and any plans shall be prepared by a

1 design professional who is duly licensed and registered in
2 California.

3 (2) The documents shall not include a design-build-operate
4 contract for any project. The documents, however, may include
5 operations during a training or transition period but shall not
6 include long-term operations for any project.

7 (b) Based on the documents prepared under subdivision (a), the
8 director shall prepare and issue a request for qualifications in order
9 to prequalify or short-list the design-build entities whose proposals
10 shall be evaluated for final selection. The request for qualifications
11 shall include, but need not be limited to, the following elements:

12 (1) Identification of the basic scope and needs of the project or
13 contract, the expected cost range, the methodology that will be
14 used by the department to evaluate proposals, the procedure for
15 final selection of the design-build entity, and any other information
16 deemed necessary by the director to inform interested parties of
17 the contracting opportunity.

18 (2) Significant factors that the department reasonably expects
19 to consider in evaluating qualifications, including technical design
20 and construction expertise, and all other nonprice-related factors.

21 (3) A standard template request for statements of qualifications
22 prepared by the department. In preparing the standard template,
23 the department may consult with the construction industry, the
24 building trades and surety industry, and other agencies interested
25 in using the authorization provided by this article. The template
26 shall require the following information:

27 (A) If the design-build entity is a privately held corporation,
28 limited liability company, partnership, or joint venture, a listing
29 of all of the shareholders, partners, or members known at the time
30 of statement of qualification submission who will perform work
31 on the project.

32 (B) Evidence that the members of the design-build team have
33 completed, or demonstrated the experience, competency, capability,
34 and capacity to complete projects of similar size, scope, or
35 complexity, and that proposed key personnel have sufficient
36 experience and training to competently manage and complete the
37 design and construction of the project, and a financial statement
38 that ensures that the design-build entity has the capacity to
39 complete the project.

1 (C) The licenses, registration, and credentials required to design
2 and construct the project, including, but not limited to, information
3 on the revocation or suspension of any license, credential, or
4 registration.

5 (D) Evidence that establishes that the design-build entity has
6 the capacity to obtain all required payment and performance
7 bonding, liability insurance, and errors and omissions insurance.

8 (E) Information concerning workers' compensation experience
9 history and a worker safety program.

10 (F) If the proposed design-build entity is a corporation, limited
11 liability company, partnership, joint venture, or other legal entity,
12 a copy of the organizational documents or agreement committing
13 to form the organization.

14 (G) An acceptable safety record. A proposer's safety record
15 shall be deemed acceptable if its experience modification rate for
16 the most recent three-year period is an average of 1.00 or less, and
17 its average total recordable injury or illness rate and average lost
18 work rate for the most recent three-year period does not exceed
19 the applicable statistical standards for its business category or if
20 the proposer is a party to an alternative dispute resolution system
21 as provided for in Section 3201.5 of the Labor Code.

22 (4) (A) The information required under this subdivision shall
23 be certified under penalty of perjury by the design-build entity and
24 its general partners or joint venture members.

25 (B) Information required under this subdivision that is not
26 otherwise a public record under the California Public Records Act
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
28 Title 1 of the Government Code) shall not be open to public
29 inspection.

30 (c) A design-build entity shall not be prequalified or shortlisted
31 unless the entity provides an enforceable commitment to the
32 director that the entity and its subcontractors at every tier will use
33 a skilled and trained workforce to perform all work on the project
34 or contract that falls within an apprenticeable occupation in the
35 building and construction trades.

36 (1) For purposes of this subdivision:

37 (A) "Apprenticeable occupation" means an occupation for which
38 the chief had approved an apprenticeship program pursuant to
39 Section 3075 of the Labor Code prior to January 1, 2014.

1 (B) “Skilled and trained workforce” means a workforce that
2 meets all of the following conditions:

3 (i) All the workers are either skilled journeypersons or
4 apprentices registered in an apprenticeship program approved by
5 the Chief of the Division of Apprenticeship Standards.

6 (ii) (I) As of January 1, 2016, at least 20 percent of the skilled
7 journey persons employed to perform work on the contract or
8 project by the entity and each of its subcontractors at every tier
9 are graduates of an apprenticeship program for the applicable
10 occupation that was either approved by the Chief of the Division
11 of Apprenticeship Standards pursuant to Section 3075 of the Labor
12 Code or located outside California and approved for federal
13 purposes pursuant to the apprenticeship regulations adopted by
14 the federal Secretary of Labor.

15 (II) As of January 1, 2017, at least 30 percent of the skilled
16 journey persons employed to perform work on the contract or
17 project by the entity and each of its subcontractors at every tier
18 are graduates of an apprenticeship program for the applicable
19 occupation that was either approved by the Chief of the Division
20 of Apprenticeship Standards pursuant to Section 3075 of the Labor
21 Code or located outside California and approved for federal
22 purposes pursuant to the apprenticeship regulations adopted by
23 the federal Secretary of Labor.

24 (III) As of January 1, 2018, at least 40 percent of the skilled
25 journey persons employed to perform work on the contract or
26 project by the entity and each of its subcontractors at every tier
27 are graduates of an apprenticeship program for the applicable
28 occupation that was either approved by the Chief of the Division
29 of Apprenticeship Standards pursuant to Section 3075 of the Labor
30 Code or located outside California and approved for federal
31 purposes pursuant to the apprenticeship regulations adopted by
32 the federal Secretary of Labor.

33 (IV) As of January 1, 2019, at least 50 percent of the skilled
34 journey persons employed to perform work on the contract or
35 project by the entity and each of its subcontractors at every tier
36 are graduates of an apprenticeship program for the applicable
37 occupation that was either approved by the Chief of the Division
38 of Apprenticeship Standards pursuant to Section 3075 of the Labor
39 Code or located outside California and approved for federal

1 purposes pursuant to the apprenticeship regulations adopted by
2 the federal Secretary of Labor.

3 (V) As of January 1, 2020, at least 60 percent of the skilled
4 journey persons employed to perform work on the contract or
5 project by the entity and each of its subcontractors at every tier
6 are graduates of an apprenticeship program for the applicable
7 occupation that was either approved by the Chief of the Division
8 of Apprenticeship Standards pursuant to Section 3075 of the Labor
9 Code or located outside California and approved for federal
10 purposes pursuant to the apprenticeship regulations adopted by
11 the federal Secretary of Labor.

12 (iii) For an apprenticeable occupation in which no apprenticeship
13 program had been approved by the chief prior to January 1, 1995,
14 up to one-half of the graduation percentage requirement in
15 subclause (I) of clause (ii) may be satisfied by skilled
16 journeypersons who commenced working in the apprenticeable
17 occupation prior to the chief's approval of an apprenticeship
18 program for that occupation in the county in which the project is
19 located.

20 (C) "Skilled journey person" means a worker who either:

21 (i) Graduated from an apprenticeship program for the applicable
22 occupation that was approved by the chief or located outside
23 California and approved for federal purposes pursuant to the
24 apprenticeship regulations adopted by the federal Secretary of
25 Labor.

26 (ii) Has at least as many hours of on-the-job experience in the
27 applicable occupation as would be required to graduate from an
28 apprenticeship program for the applicable occupation that is
29 approved by the chief.

30 (2) An entity's commitment that a skilled and trained workforce
31 will be used to perform the project or contract may be established
32 by any of the following:

33 (A) The entity's agreement with the director that the entity and
34 its subcontractors at every tier will comply with the requirements
35 of this subdivision and that the entity will provide the director with
36 evidence, on a monthly basis while the project or contract is being
37 performed, that the entity and its subcontractors are complying
38 with the requirements of this subdivision.

39 (B) If the director has entered into a project labor agreement
40 that will bind all contractors and subcontractors performing work

1 on the project or contract and that includes the requirements of
2 this subdivision, the entity's agreement that it will become a party
3 to that project labor agreement.

4 (C) Evidence that the entity has entered into a project labor
5 agreement that includes the requirements of this subdivision and
6 that will bind the entity and all its subcontractors at every tier
7 performing the project or contract.

8 (d) Based on the documents prepared as described in subdivision
9 (a), the director shall prepare a request for proposals that invites
10 prequalified or short-listed entities to submit competitive sealed
11 proposals in the manner prescribed by the department. The request
12 for proposals shall include, but need not be limited to, the following
13 elements:

14 (1) Identification of the basic scope and needs of the project or
15 contract, the estimated cost of the project, the methodology that
16 will be used by the department to evaluate proposals, whether the
17 contract will be awarded on the basis of low bid or best value, and
18 any other information deemed necessary by the department to
19 inform interested parties of the contracting opportunity.

20 (2) Significant factors that the department reasonably expects
21 to consider in evaluating proposals, including, but not limited to,
22 cost or price and all nonprice-related factors.

23 (3) The relative importance or the weight assigned to each of
24 the factors identified in the request for proposals.

25 (4) Where a best value selection method is used, the department
26 may reserve the right to request proposal revisions and hold
27 discussions and negotiations with responsive proposers, in which
28 case the department shall so specify in the request for proposals
29 and shall publish separately or incorporate into the request for
30 proposals applicable procedures to be observed by the department
31 to ensure that any discussions or negotiations are conducted in
32 good faith.

33 (e) For those projects utilizing low bid as the final selection
34 method, the competitive bidding process shall result in lump-sum
35 bids by the prequalified or short-listed design-build entities, and
36 awards shall be made to the design-build entity that is the lowest
37 responsible bidder.

38 (f) For those projects utilizing best value as a selection method,
39 the design-build competition shall progress as follows:

1 (1) Competitive proposals shall be evaluated by using only the
2 criteria and selection procedures specifically identified in the
3 request for proposals. The following minimum factors, however,
4 shall be weighted as deemed appropriate by the department:

5 (A) Price, unless a stipulated sum is specified.

6 (B) Technical design and construction expertise.

7 (C) Life-cycle costs over 15 or more years.

8 (2) Pursuant to subdivision (d), the department may hold
9 discussions or negotiations with responsive proposers using the
10 process articulated in the department's request for proposals.

11 (3) When the evaluation is complete, the responsive proposers
12 shall be ranked based on a determination of value provided,
13 provided that no more than three proposers are required to be
14 ranked.

15 (4) The award of the contract shall be made to the responsible
16 design-build entity whose proposal is determined by the director
17 to have offered the best value to the public.

18 (5) Notwithstanding any other provision of this code, upon
19 issuance of a contract award, the director shall publicly announce
20 its award, identifying the design-build entity to which the award
21 is made, along with a statement regarding the basis of the award.

22 (6) The statement regarding the director's contract award,
23 described in paragraph (5), and the contract file shall provide
24 sufficient information to satisfy an external audit.

25 10192. (a) The design-build entity shall provide payment and
26 performance bonds for the project in the form and in the amount
27 required by the director, and issued by a California admitted surety.
28 The amount of the payment bond shall not be less than the amount
29 of the performance bond.

30 (b) The design-build contract shall require errors and omissions
31 insurance coverage for the design elements of the project.

32 (c) The department shall develop a standard form of payment
33 and performance bond for its design-build projects.

34 10193. (a) The department, in each design-build request for
35 proposals, may identify specific types of subcontractors that must
36 be included in the design-build entity statement of qualifications
37 and proposal. All construction subcontractors that are identified
38 in the proposal shall be afforded all the protections of Chapter 4
39 (commencing with Section 4100) of Part 1.

(b) Following award of the design-build contract, the design-build entity shall proceed as follows in awarding construction subcontracts with a value exceeding one-half of 1 percent of the contract price allocable to construction work:

(1) Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the department, including a fixed date and time on which qualifications statements, bids, or proposals will be due.

(2) Establish reasonable qualification criteria and standards.

(3) Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing. The foregoing process does not apply to construction subcontractors listed in the original proposal. Subcontractors awarded construction subcontracts under this subdivision shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1.

10194. (a) If the department elects to award a project pursuant to this article, retention proceeds withheld by the department from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(b) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the department and the design-build entity. If the design-build entity provides written notice to any subcontractor that is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the department and the design-build entity from any payment made by the design-build entity to the subcontractor.

10195. Nothing in this article affects, expands, alters, or limits any rights or remedies otherwise available at law.

10196. *This article shall remain in effect only until January 1, 2025, and as of that date is repealed.*

~~SEC. 6.~~

SEC. 7. Section 20133 of the Public Contract Code is repealed.

~~SEC. 7.~~

SEC. 8. Section 20175.2 of the Public Contract Code is repealed.

~~SEC. 8.~~

SEC. 9. Section 20193 of the Public Contract Code is repealed.

~~SEC. 9.~~

SEC. 10. Section 20301.5 of the Public Contract Code is repealed.

~~SEC. 10.~~

SEC. 11. Article 22 (commencing with Section 20360) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code is repealed.

~~SEC. 11.~~

SEC. 12. Section 20688.6 of the Public Contract Code is repealed.

~~SEC. 12.~~

SEC. 13. Chapter 4 (commencing with Section 22160) is added to Part 3 of Division 2 of the Public Contract Code, to read:

CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS

22160. (a) The Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from such projects including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

(b) It is the intent of the Legislature that the following occur:

(1) This chapter provides general authorization for local agencies to use design-build for projects, excluding projects on the state highway system.

(2) This chapter shall not be deemed to provide a preference for the design-build method over other procurement methodologies.

22161. For purposes of this chapter, the following definitions apply:

(a) “Best value” means a value determined by evaluation of objective criteria related to price, features, functions, life-cycle

1 costs, experience, and past performance. A best value determination
2 may involve the selection of the lowest cost proposal meeting the
3 interests of the local agency and meeting the objectives of the
4 project, selection of the best proposal for a stipulated sum
5 established by the procuring agency, or a tradeoff between price
6 and other specified factors.

7 (b) “Construction subcontract” means each subcontract awarded
8 by the design-build entity to a subcontractor that will perform work
9 or labor or render service to the design-build entity in or about the
10 construction of the work or improvement, or a subcontractor
11 licensed by the State of California that, under subcontract to the
12 design-build entity, specially fabricates and installs a portion of
13 the work or improvement according to detailed drawings contained
14 in the plans and specifications produced by the design-build team.

15 (c) “Design-build” means a project delivery process in which
16 both the design and construction of a project are procured from a
17 single entity.

18 (d) “Design-build entity” means a corporation, limited liability
19 company, partnership, joint venture, or other legal entity that is
20 able to provide appropriately licensed contracting, architectural,
21 and engineering services as needed pursuant to a design-build
22 contract.

23 (e) “Design-build team” means the design-build entity itself
24 and the individuals and other entities identified by the design-build
25 entity as members of its team. Members shall include the general
26 contractor and, if utilized in the design of the project, all electrical,
27 mechanical, and plumbing contractors.

28 (f) “Local agency” means the following:

29 (1) A city, county, or city and county.

30 (2) A special district that operates wastewater facilities, solid
31 waste management facilities, water recycling facilities, or fire
32 protection facilities.

33 (3) Any transit district, included transit district, municipal
34 operator, included municipal operator, any consolidated agency,
35 as described in Section 132353.1 of the Public Utilities Code, any
36 joint powers authority formed to provide transit service, any county
37 transportation commission created pursuant to Section 130050 of
38 the Public Utilities Code, or any other local or regional agency,
39 responsible for the construction of transit projects.

(g) (1) For a local agency defined in paragraph (1) of subdivision (f), “project” means the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a local agency defined in paragraph (1) of subdivision (f) that operates wastewater facilities, solid waste management facilities, or water recycling facilities, “project” also means the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, or regional and local water recycling facilities.

(2) For a local agency defined in paragraph (2) of subdivision (f), “project” means the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, regional and local water recycling facilities, or fire protection facilities.

(3) For a local agency defined in paragraph (3) of subdivision (f), “project” means a transit capital project, but does not include state highway construction or local street and road projects.

22162. (a) Except as provided in subdivision (b), and notwithstanding any other law, a local agency, with approval of its governing body, may procure design-build contracts for public works projects in excess of one million dollars (\$1,000,000), awarding the contract either the low bid or the best value, provided that this article shall not apply to any projects on the state highway system.

(b) For the acquisition and installation of technology applications or surveillance equipment designed to enhance safety, disaster preparedness, and homeland security efforts, there shall be no cost threshold and the local agency described in paragraph (3) of subdivision (f) of Section 22161 may award the contract to the lowest responsible bidder or by using the best value method.

(c) The local agency shall develop guidelines for a standard organizational conflict-of-interest policy, consistent with applicable law, regarding the ability of a person or entity, that performs services for the local agency relating to the solicitation of a design-build project, to submit a proposal as a design-build entity, or to join a design-build team. This conflict-of-interest policy shall

1 apply to each local agency entering into design-build contracts
2 authorized under this ~~article~~ *chapter*.

3 22164. The procurement process for the design-build projects
4 shall progress as follows:

5 (a) (1) The local agency shall prepare a set of documents setting
6 forth the scope and estimated price of the project. The documents
7 may include, but need not be limited to, the size, type, and desired
8 design character of the project, performance specifications covering
9 the quality of materials, equipment, workmanship, preliminary
10 plans or building layouts, or any other information deemed
11 necessary to describe adequately the local agency's needs. The
12 performance specifications and any plans shall be prepared by a
13 design professional who is duly licensed and registered in
14 California.

15 (2) The documents shall not include a design-build-operate
16 contract for any project. The documents, however, may include
17 operations during a training or transition period but shall not
18 include long-term operations for any project.

19 (b) Based on the documents prepared under subdivision (a), the
20 local agency shall prepare and issue a request for qualifications in
21 order to prequalify or short-list the design-build entities whose
22 proposals shall be evaluated for final selection. The request for
23 qualifications shall include, but need not be limited to, the
24 following elements:

25 (1) Identification of the basic scope and needs of the project or
26 contract, the expected cost range, the methodology that will be
27 used by the local agency to evaluate proposals, the procedure for
28 final selection of the design-build entity, and any other information
29 deemed necessary by the local agency to inform interested parties
30 of the contracting opportunity.

31 (2) Significant factors that the local agency reasonably expects
32 to consider in evaluating qualifications, including technical design
33 and construction expertise, acceptable safety record, and all other
34 nonprice-related factors.

35 (3) A standard template request for statements of qualifications
36 prepared by the local agency. In preparing the standard template,
37 the local agency may consult with the construction industry, the
38 building trades and surety industry, and other local agencies
39 interested in using the authorization provided by this article. The
40 template shall require the following information:

1 (A) If the design-build entity is a privately held corporation,
2 limited liability company, partnership, or joint venture, a listing
3 of all of the shareholders, partners, or members known at the time
4 of statement of qualification submission who will perform work
5 on the project.

6 (B) Evidence that the members of the design-build team have
7 completed, or demonstrated the experience, competency, capability,
8 and capacity to complete projects of similar size, scope, or
9 complexity, and that proposed key personnel have sufficient
10 experience and training to competently manage and complete the
11 design and construction of the project, and a financial statement
12 that ensures that the design-build entity has the capacity to
13 complete the project.

14 (C) The licenses, registration, and credentials required to design
15 and construct the project, including, but not limited to, information
16 on the revocation or suspension of any license, credential, or
17 registration.

18 (D) Evidence that establishes that the design-build entity has
19 the capacity to obtain all required payment and performance
20 bonding, liability insurance, and errors and omissions insurance.

21 (E) Information concerning workers' compensation experience
22 history and a worker safety program.

23 (F) If the proposed design-build entity is a corporation, limited
24 liability company, partnership, joint venture, or other legal entity,
25 a copy of the organizational documents or agreement committing
26 to form the organization.

27 (G) An acceptable safety record. A proposer's safety record
28 shall be deemed acceptable if its experience modification rate for
29 the most recent three-year period is an average of 1.00 or less, and
30 its average total recordable injury or illness rate and average lost
31 work rate for the most recent three-year period does not exceed
32 the applicable statistical standards for its business category or if
33 the proposer is a party to an alternative dispute resolution system
34 as provided for in Section 3201.5 of the Labor Code.

35 (4) (A) The information required under this subdivision shall
36 be certified under penalty of perjury by the design-build entity and
37 its general partners or joint venture members.

38 (B) Information required under this subdivision that is not
39 otherwise a public record under the California Public Records Act
40 (Chapter 3.5 (commencing with Section 6250) of Division 7 of

1 Title 1 of the Government Code) shall not be open to public
2 inspection.

3 (c) A design-build entity shall not be prequalified or shortlisted
4 unless the entity provides an enforceable commitment to the local
5 agency that the entity and its subcontractors at every tier will use
6 a skilled and trained workforce to perform all work on the project
7 or contract that falls within an apprenticeable occupation in the
8 building and construction trades.

9 (1) For purposes of this subdivision:

10 (A) "Apprenticeable occupation" means an occupation for which
11 the chief had approved an apprenticeship program pursuant to
12 Section 3075 of the Labor Code prior to January 1, 2014.

13 (B) "Skilled and trained workforce" means a workforce that
14 meets all of the following conditions:

15 (i) All the workers are either skilled journeypersons or
16 apprentices registered in an apprenticeship program approved by
17 the Chief of the Division of Apprenticeship Standards.

18 (ii) (I) As of January 1, 2016, at least 20 percent of the skilled
19 journey persons employed to perform work on the contract or
20 project by the entity and each of its subcontractors at every tier
21 are graduates of an apprenticeship program for the applicable
22 occupation that was either approved by the Chief of the Division
23 of Apprenticeship Standards pursuant to Section 3075 of the Labor
24 Code or located outside California and approved for federal
25 purposes pursuant to the apprenticeship regulations adopted by
26 the federal Secretary of Labor.

27 (II) As of January 1, 2017, at least 30 percent of the skilled
28 journey persons employed to perform work on the contract or
29 project by the entity and each of its subcontractors at every tier
30 are graduates of an apprenticeship program for the applicable
31 occupation that was either approved by the Chief of the Division
32 of Apprenticeship Standards pursuant to Section 3075 of the Labor
33 Code or located outside California and approved for federal
34 purposes pursuant to the apprenticeship regulations adopted by
35 the federal Secretary of Labor.

36 (III) As of January 1, 2018, at least 40 percent of the skilled
37 journey persons employed to perform work on the contract or
38 project by the entity and each of its subcontractors at every tier
39 are graduates of an apprenticeship program for the applicable
40 occupation that was either approved by the Chief of the Division

1 of Apprenticeship Standards pursuant to Section 3075 of the Labor
2 Code or located outside California and approved for federal
3 purposes pursuant to the apprenticeship regulations adopted by
4 the federal Secretary of Labor.

5 (IV) As of January 1, 2019, at least 50 percent of the skilled
6 journey persons employed to perform work on the contract or
7 project by the entity and each of its subcontractors at every tier
8 are graduates of an apprenticeship program for the applicable
9 occupation that was either approved by the Chief of the Division
10 of Apprenticeship Standards pursuant to Section 3075 of the Labor
11 Code or located outside California and approved for federal
12 purposes pursuant to the apprenticeship regulations adopted by
13 the federal Secretary of Labor.

14 (V) As of January 1, 2020, at least 60 percent of the skilled
15 journey persons employed to perform work on the contract or
16 project by the entity and each of its subcontractors at every tier
17 are graduates of an apprenticeship program for the applicable
18 occupation that was either approved by the Chief of the Division
19 of Apprenticeship Standards pursuant to Section 3075 of the Labor
20 Code or located outside California and approved for federal
21 purposes pursuant to the apprenticeship regulations adopted by
22 the federal Secretary of Labor.

23 (iii) For an apprenticeable occupation in which no apprenticeship
24 program had been approved by the chief prior to January 1, 1995,
25 up to one-half of the graduation percentage requirement in
26 subclause (I) of clause (ii) may be satisfied by skilled
27 journeypersons who commenced working in the apprenticeable
28 occupation prior to the chief's approval of an apprenticeship
29 program for that occupation in the county in which the project is
30 located.

31 (C) "Skilled journey person" means a worker who either:

32 (i) Graduated from an apprenticeship program for the applicable
33 occupation that was approved by the chief or located outside
34 California and approved for federal purposes pursuant to the
35 apprenticeship regulations adopted by the federal Secretary of
36 Labor.

37 (ii) Has at least as many hours of on-the-job experience in the
38 applicable occupation as would be required to graduate from an
39 apprenticeship program for the applicable occupation that is
40 approved by the chief.

(2) An entity's commitment that a skilled and trained workforce will be used to perform the project or contract may be established by any of the following:

(A) The entity's agreement with the local agency that the entity and its subcontractors at every tier will comply with the requirements of this subdivision and that the entity will provide the local agency with evidence, on a monthly basis while the project or contract is being performed, that the entity and its subcontractors are complying with the requirements of this subdivision.

(B) If the local agency has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract and that includes the requirements of this subdivision, the entity's agreement that it will become a party to that project labor agreement.

(C) Evidence that the entity has entered into a project labor agreement that includes the requirements of this subdivision and that will bind the entity and all its subcontractors at every tier performing the project or contract.

(d) Based on the documents prepared as described in subdivision (a), the local agency shall prepare a request for proposals that invites prequalified or short-listed entities to submit competitive sealed proposals in the manner prescribed by the local agency. The request for proposals shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the estimated cost of the project, the methodology that will be used by the local agency to evaluate proposals, whether the contract will be awarded on the basis of low bid or best value, and any other information deemed necessary by the local agency to inform interested parties of the contracting opportunity.

(2) Significant factors that the local agency reasonably expects to consider in evaluating proposals, including, but not limited to, cost or price and all nonprice-related factors.

(3) The relative importance or the weight assigned to each of the factors identified in the request for proposals.

(4) Where a best value selection method is used, the local agency may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the local agency shall so specify in the request for proposals

1 and shall publish separately or incorporate into the request for
2 proposals applicable procedures to be observed by the local agency
3 to ensure that any discussions or negotiations are conducted in
4 good faith.

5 (e) For those projects utilizing low bid as the final selection
6 method, the competitive bidding process shall result in lump-sum
7 bids by the prequalified or short-listed design-build entities, and
8 awards shall be made to the design-build entity that is the lowest
9 responsible bidder.

10 (f) For those projects utilizing best value as a selection method,
11 the design-build competition shall progress as follows:

12 (1) Competitive proposals shall be evaluated by using only the
13 criteria and selection procedures specifically identified in the
14 request for proposals. The following minimum factors, however,
15 shall be weighted as deemed appropriate by the local agency:

16 (A) Price, unless a stipulated sum is specified.

17 (B) Technical design and construction expertise.

18 (C) Life-cycle costs over 15 or more years.

19 (2) Pursuant to subdivision (d), the local agency may hold
20 discussions or negotiations with responsive proposers using the
21 process articulated in the local agency's request for proposals.

22 (3) When the evaluation is complete, the responsive proposers
23 shall be ranked based on a determination of value provided,
24 provided that no more than three proposers are required to be
25 ranked.

26 (4) The award of the contract shall be made to the responsible
27 design-build entity whose proposal is determined by the local
28 agency to have offered the best value to the public.

29 (5) Notwithstanding any other provision of this code, upon
30 issuance of a contract award, the local agency shall publicly
31 announce its award, identifying the design-build entity to which
32 the award is made, along with a statement regarding the basis of
33 the award.

34 (6) The statement regarding the local agency's contract award,
35 described in paragraph (5), and the contract file shall provide
36 sufficient information to satisfy an external audit.

37 22165. (a) The design-build entity shall provide payment and
38 performance bonds for the project in the form and in the amount
39 required by the local agency, and issued by a California admitted

1 surety. The amount of the payment bond shall not be less than the
2 amount of the performance bond.

3 (b) The design-build contract shall require errors and omissions
4 insurance coverage for the design elements of the project.

5 (c) The local agency shall develop a standard form of payment
6 and performance bond for its design-build projects.

7 22166. (a) The local agency, in each design-build request for
8 proposals, may identify specific types of subcontractors that must
9 be included in the design-build entity statement of qualifications
10 and proposal. All construction subcontractors that are identified
11 in the proposal shall be afforded all the protections of Chapter 4
12 (commencing with Section 4100) of Part 1.

13 (b) Following award of the design-build contract, the
14 design-build entity shall proceed as follows in awarding
15 construction subcontracts with a value exceeding one-half of 1
16 percent of the contract price allocable to construction work:

17 (1) Provide public notice of availability of work to be
18 subcontracted in accordance with the publication requirements
19 applicable to the competitive bidding process of the local agency,
20 including a fixed date and time on which qualifications statements,
21 bids, or proposals will be due.

22 (2) Establish reasonable qualification criteria and standards.

23 (3) Award the subcontract either on a best value basis or to the
24 lowest responsible bidder. The process may include prequalification
25 or short-listing. The foregoing process does not apply to
26 construction subcontractors listed in the original proposal.
27 Subcontractors awarded construction subcontracts under this
28 subdivision shall be afforded all the protections of Chapter 4
29 (commencing with Section 4100) of Part 1.

30 22167. (a) If the local agency elects to award a project pursuant
31 to this article, retention proceeds withheld by the local agency
32 from the design-build entity shall not exceed 5 percent if a
33 performance and payment bond, issued by an admitted surety
34 insurer, is required in the solicitation of bids.

35 (b) In a contract between the design-build entity and a
36 subcontractor, and in a contract between a subcontractor and any
37 subcontractor thereunder, the percentage of the retention proceeds
38 withheld may not exceed the percentage specified in the contract
39 between the local agency and the design-build entity. If the
40 design-build entity provides written notice to any subcontractor

1 that is not a member of the design-build entity, prior to or at the
2 time the bid is requested, that a bond may be required and the
3 subcontractor subsequently is unable or refuses to furnish a bond
4 to the design-build entity, then the design-build entity may withhold
5 retention proceeds in excess of the percentage specified in the
6 contract between the local agency and the design-build entity from
7 any payment made by the design-build entity to the subcontractor.

8 22168. Nothing in this article affects, expands, alters, or limits
9 any rights or remedies otherwise available at law.

10 22169. *This chapter shall remain in effect only until January*
11 *1, 2025, and as of that date is repealed.*

12 ~~SEC. 13.~~

13 *SEC. 14.* Due to the unique circumstances of the Marin
14 Healthcare District, the Legislature hereby finds and declares that
15 a general statute cannot be made applicable within the meaning
16 of Section 16 of Article IV of the California Constitution.
17 Therefore, the special legislation contained in Section 4 of this act
18 is applicable only to the Marin Healthcare District.

19 ~~SEC. 14.~~

20 *SEC. 15.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.